FILED
FEB 2 0 2004
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No. 03-903

IN THE

Supreme Court of the United States

LANTZ WELCH and LANTZ WELCH, P.C.,

Petitioners,

v.

GRANT DAVIS, SCOTT BETHUNE, THOMAS JONES, TIMOTHY L. BRAKE, TIMOTHY L. BRAKE, P.C., and DAVIS, BETHUNE & JONES, L.L.C.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT

BRIEF IN OPPOSITION

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PARTIES

Respondents submit that Timothy L. Brake and Timothy L. Brake, P.C. have been improperly designated as Respondents in this action. Petitioner is appealing the denial of his application to compel Davis, Bethune, Jones and their law firm, Davis, Bethune & Jones, L.L.C., to arbitrate a dispute over legal fees. To the extent Petitioner sought to have Brake and his professional corporation arbitrate, Petitioner's Application was not denied as Brake and Petitioner participated in an arbitration. The Circuit Court of Jackson County, Missouri only denied the Application to Compel Arbitration as to Respondents Davis, Bethune, Jones and their professional corporation, Davis, Bethune & Jones, L.L.C. *See* Petitioner's App. 16-17. The Arbitration Award in favor of Brake and his professional corporation was confirmed in the Missouri courts and that decision is not being appealed here. The opinion of the Missouri Court of Appeals makes it clear that the issue on appeal was whether the Circuit Court properly denied the Application to Compel Davis, Bethune and Jones to arbitrate, not Brake. *See* Petitioner's App. 4, 13. Therefore, Brake and his professional corporation are not proper parties to the appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Davis, Bethune & Jones, L.L.C, states that it has no parent and no publicly held corporation owns any stock in the corporation.

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STATEMENT OF THE CASE

Lantz Welch and Lantz Welch, P.C. (collectively "Petitioner") and Timothy L. Brake and Timothy L. Brake, P.C. (collectively "Brake") began an association of their law practices in 1980. By 1992, Petitioner was no longer actively practicing law. In fact, after 1992, Petitioner only participated in one long-since-resolved case which is not part of this dispute.[1] Contrary to Petitioner's assertions, he did not provide all of the financing for the firm, and Respondents[2] generated and worked on their own cases without assistance or supervision from Petitioner.

The last Agreement between Brake and Petitioner was entered into on January 1, 1992 ("Welch-Brake Agreement"). That Agreement created a contractual relationship between Brake and Petitioner for the sharing of fees and expenses relating to an association of their law practices. The Agreement contained an arbitration provision. At Petitioner's suggestion, paragraph 9 of the Agreement was modified so it read:

> In the event this Agreement is terminated by either party, any law business may be withdrawn by [Brake] with the understanding that [Brake] shall first reimburse [Petitioner] any amounts of monies previously advanced by [Petitioner] on said

1. Petitioner performed no work on any of the cases involved in this dispute over legal fees.

2. As used in this Response, "Respondents" refers to Grant Davis, Scott Bethune and Thomas Jones, and their law firm, Davis Bethune & Jones, L.L.C. It does not include Timothy L. Brake or Timothy L. Brake, P.C.

> matters, and it is understood by [Petitioner] that [Petitioner] shall not participate in any legal fees in said matters . . .

Respondents are not parties to the Welch-Brake Agreement and never made any agreement to arbitrate disputes they may have with Petitioner. None of Respondents are mentioned in the Welch-Brake Agreement. The only mention of what would happen with previously earned, but unrealized, contingency case fees after termination of the Agreement was that "[Petitioner] shall not participate in any legal fees in said matters." At the time the Welch-Brake Agreement containing the arbitration clause was signed, only Respondent Grant Davis was associated with Petitioner and Brake. Respondents were not given the opportunity to be parties to the Welch-Brake Agreement.[3]

Petitioner informed Brake, Davis, Bethune and Jones by memorandum that he intended to breach a prior agreement whereby the actual practicing attorneys (Brake, Davis, Bethune and Jones) would receive all fees after certain overhead costs were covered. Subsequently, Brake informed Petitioner that he was terminating the Welch-Brake Agreement and, "Pursuant to paragraph 9, [Brake] is withdrawing the law business identified on the enclosed list." Brake repaid Petitioner the case advances as required by the Agreement.

Respondents formed their own legal practice and incorporated Davis, Bethune & Jones, L.L.C. ("DBJ, LLC"). Brake joined DBJ, LLC as "of counsel." All of the clients

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3. DBJ, LLC was not in existence when the Welch-Brake Agreement was signed as it was not formed until November 2000.

indicated in writing they wanted Brake, Davis, Bethune and Jones to continue to represent them, and signed contingency fee contracts with the new firm Brake had joined, DBJ, LLC. Brake continued to work on the clients' cases through his association with DBJ, LLC.

The dispute between Petitioner and Brake turned on a question of contract interpretation as to what part of the Welch-Brake Agreement applied to the withdrawn cases. The arbitration panel ruled in Brake's favor and adopted his construction of the Welch-Brake Agreement. The Arbitration Award stated that "all of the law business listed in Exhibit 102 [the withdrawn cases] is governed by paragraph 9 of the January 1, 1992 Agreement and [Petitioner and his professional corporation] are not entitled to participate in any legal fees in any of the matters in the referenced law business." Thus, Petitioner was found to possess no legally cognizable interest in the case fees that were in dispute.

The only issue Petitioner asks this Court to review is whether the Missouri Court of Appeals improperly utilized the harmless error doctrine in affirming the decision denying Petitioner's Application to Compel Respondents to arbitrate. The Arbitration Award in favor of Brake was confirmed and is not being appealed here. The Award concluded that Petitioner has no interest in the previously earned legal fees from any of the withdrawn cases regardless of who Petitioner makes a claim against for those fees. Because Petitioner lacks any interest in the fees, the Missouri Court of Appeals affirmed the grant of summary judgment in Respondents' favor on Petitioner's *quantum meruit* claim for a share of the fees. For the same reason, any arbitration between Petitioner and Respondents would be a futile exercise, which is why the Missouri Court of Appeals concluded that

Petitioner could not have been prejudiced when his request to compel Respondents to arbitrate was denied.

REASONS FOR DENYING THE PETITION

I. The Petition for Writ of Certiorari should be denied because Petitioner contracted away all rights to fees and lacks a legally cognizable interest in the legal fees he seeks; therefore, the appeal is moot and this Court lacks jurisdiction.

Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies. *DeFunis v. Odegaard*, 416 U.S. 312, 316, 94 S.Ct. 1704, 1705, 40 L.Ed.2d 164 (1974); U.S. Constitution, Art. III, § 2. Article III denies federal courts the power "to decide questions that cannot affect the rights of the litigants in the case before them." *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971). A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)). It has long been settled that a federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 133, 40 L.Ed. 293 (1895). *See also Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971).

Since the arbitration between Petitioner and Brake conclusively established that Petitioner has no interest in the attorney fees from the withdrawn cases, Petitioner has no legally cognizable interest in any claim for fees against Respondents that could be subject to arbitration. The lack of such an interest renders this appeal moot and renders purely academic the question of whether the harmless error doctrine may be applied to cases arising under 9 U.S.C. § 1, *et seq*. of the Federal Arbitration Act ("FAA"). Consequently, this Court lacks any jurisdiction to hear this appeal, and this Petition for Writ of Certiorari should be denied.

The arbitration of the dispute over the case fees took place after Petitioner's Application to Compel Arbitration was denied. The issue submitted to the arbitrators was whether paragraph 9 of the Welch-Brake Agreement, which divested Petitioner of any interest in the fees, applied to the cases in dispute. The arbitrators issued an Arbitration Award in which they ruled that all of the cases in dispute were "governed by paragraph 9 of the January 1, 1992 Agreement and [Petitioner] [is] not entitled to participate in any legal fees paid in any of the matters in the referenced law business." Respondents' App. 1. Thus, the arbitrators ruled that under the Welch-Brake Agreement Petitioner is not entitled to a share of the fees from the cases in dispute. The Arbitration Award was confirmed by the Circuit Court of Jackson County, Missouri and the Missouri Court of Appeals, and is not subject to review by this Court.

Petitioner's claim against Respondents was one for *quantum meruit* for the value of services provided on cases prior to the clients' termination of their existing contracts and retention of DBJ, LLC. The confirmed Arbitration Award is a final judgment that Petitioner is not entitled to any fees

for services performed prior to the clients' termination of their contingency fee contracts.[4] In paragraph 9 of the Welch-Brake Agreement, Petitioner contractually relinquished any right he had in such fees to Brake. Because Petitioner has no right to participate in any of the contested fees, he cannot prevail upon any theory against Respondents even if the Court were to grant his requested relief and require Respondents to arbitrate Petitioner's claim against them.[5] Consequently, the arbitration panel's ruling that Petitioner has no interest in the fees makes this appeal of the denial of Petitioner's Application to Compel Arbitration moot. When events take place, including another arbitration ruling, that render moot whether an application to compel arbitration was properly denied, the appeal should be dismissed. *See Pipe Trades Council of Northern California v. Underground Contractors Ass'n of Northern California*, 835 F.2d 1275 (9th Cir. 1988) (arbitrator's ruling on jurisdictional agreement in separate arbitration rendered moot appellant's claim that its application to compel arbitration was improperly denied); *Briggs & Stratton Corp. v. Local 232*, 36 F.3d 712 (7th Cir. 1994) (union's appeal of injunction was moot where arbitrator's ruling caused injunction to lapse); *IBTCWHA, Local Union No. 2702 v. Western Air Lines, Inc., et al.*, 854

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4. While Petitioner is quick to point out the strong federal policy encouraging arbitration, he ignores the resulting deference that a confirmed arbitration award is given as Petitioner seeks to obtain a different result in an arbitration against Brake's alleged agents than he received in the arbitration against Brake.

5. Recognizing Petitioner's inability to state a claim for a share of the fees, the Circuit Court granted Respondents' Motion for Summary Judgment dismissing Petitioner's claims against Respondents and the Missouri Court of Appeals affirmed that judgment.

F.2d 1178 (9th Cir. 1988) (union's appeal of an order denying an application to compel arbitration was moot where merger took place which made it impossible to grant any relief that would have been sought in the arbitration).

The fact that Respondents were not parties to the arbitration makes no difference in the ability of the arbitrators to determine that Petitioner gave up his right to fees under paragraph 9 of the Welch-Brake Agreement. Since the dispute over whether Petitioner or Brake was entitled to the fees was a question of contract interpretation, the presence or absence of Brake's alleged agents as additional named parties was completely irrelevant to the interpretation of the Welch-Brake Agreement. Petitioner can present no logical reason why the inclusion of Respondents as parties would alter the result.[6] Respondents, unlike Lantz Welch, all appeared personally at the arbitration and gave testimony. The fact that Respondents' names were not in the arbitration caption has no bearing on the ability of the arbitration panel to determine whether Petitioner contractually waived his right to fees in the Welch-Brake Agreement. Since a legally cognizable interest in the disputed fees is a necessary prerequisite for Petitioner to bring a claim for the fees against Respondents, the arbitrators would never have reached Petitioner's claim, even if Respondents had been parties.

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6. In order to find a reason to justify inclusion of Respondents in the Welch-Brake arbitration, Petitioner claims he was deprived of the opportunity to present the merits of his position against Respondents. This is not accurate. Petitioner was not prohibited from making any argument at the arbitration. Contrary to Petitioner's assertions, he was allowed to, and did, argue that Respondents, and not Brake, had withdrawn the cases. The arbitrators rejected this argument. Because of this, the Missouri Court of Appeals could not find any reason why compelling Respondents to be named as parties to the arbitration was necessary to establishing the basis of Petitioner's dispute with Brake. Petitioner's App. 7.

Petitioner's ability to make a claim for fees against Respondents was dependent upon his prevailing on the contract dispute with Brake. Even if Respondents were ordered to arbitrate with Petitioner now, the arbitrators' decision of law that Petitioner waived his right to fees in paragraph 9 of the Welch-Brake Agreement would still be a binding judgment and would preclude re-litigating that issue.[7] Without a right to participate in fees, Petitioner is precluded from maintaining a claim for the value of legal services performed prior to the clients' contracting with DBJ, LLC. Consequently, since the Arbitration Award in favor of Brake is final and that decision is not being appealed here, this appeal is moot since Petitioner has no right to maintain an action against Respondents for a share of the fees.

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7. Because of the arbitration decision, an arbitration between Respondents and Petitioner could not possibly result in a recovery by Petitioner. If Petitioner were able to maintain an action to recover a share of the legal fees from DBJ, LLC for the reasonable value of the services performed prior to the clients' termination of their contracts, Brake could intervene based on the Arbitration Award and demand the fees be paid to him. Since Brake and DBJ, LLC are in possession of the fees at issue, there is no reason to require the parties to go through such proceedings to reach the same point.

II. The Missouri Court of Appeals' application of the harmless error doctrine does not present any basis for review by this Court.

In an attempt to concoct a basis for appealing the Missouri Court of Appeals' decision to this Court, Petitioner asserts that a "state law principle," the harmless error doctrine, was used to defeat his federal right to arbitrate under the FAA. Petition for Writ of Certiorari at p. 7. First, the concept of harmless error is not merely a state court concept. Rather, it is a universally applied principle of jurisprudence based on the sound axiom that error without prejudice is not reversible error. Federal courts are required by rule and statute to apply harmless error analysis to all cases and all appeals to avoid additional unnecessary proceedings. The Missouri Court of Appeals' reference to this doctrine was completely consistent with federal law and principles announced by this Court. Second, the Missouri Court of Appeals' reference to harmless error was not the primary basis for determining that Respondents were not required to arbitrate. Rather, prior to referencing harmless error, the Court found that the alleged agency status of Respondents was not of the type that would require these non-signatories to be subject to the arbitration agreement between Petitioner and Brake. Third, there is no conflict between the Missouri Court of Appeals' decision and decisions of other federal courts or this Court. Fourth, and finally, the unusual set of circumstances which rendered moot the issue of whether Respondents were required to arbitrate is unlikely to reoccur, so there is no compelling reason for the Court to grant certiorari.

A. All federal courts are required to perform a harmless error analysis when reviewing a case on appeal; therefore, the Missouri Court of Appeals did not violate the notion of federal preemption or the Federal Arbitration Act in relying on the harmless error doctrine.

Petitioner argues that federal law, specifically § 2 of the FAA,[8] preempts the application of a judicial doctrine, such as harmless error, from being used by a state court to deny a right to arbitrate. Petition for Writ of Certiorari at pp. 10-11. Not only is this position unsupported by any judicial authority, it directly conflicts with federal law that requires all federal courts to conduct harmless error analysis.

This Court has strongly supported the application of harmless error analysis for over fifty years. *See Kotteakos v. United States*, 328 U.S. 750, 759-60, 66 S.Ct. 1239, 1245-46, 90 L.Ed. 1557 (1946). Federal Rule of Civil Procedure, Rule 61 was adopted in 1937 and required that district courts perform a harmless error analysis in determining ruling on motions for new trials. Appellate courts have been instructed by this Court to "act in accordance with the salutary policy embodied in Rule 61." *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 554, 104 S.Ct. 845, 849, 78

8. Petitioner's sole basis for federal jurisdiction is the application of the FAA. No determination was ever made by any court that the FAA applied to the arbitration agreement at issue. Petitioner argued for the FAA's application for the first time on appeal. However, Petitioner failed to make any record in state court supporting his position that the FAA, and not Missouri's Arbitration Act, applied to the Welch-Brake Agreement. Nevertheless, Respondents will assume for purposes of this Response that the FAA is applicable.

L.Ed.2d 663 (1984). "Congress has further reinforced the application of Rule 61 by enacting the harmless error statute, 28 U.S.C. § 2111, which applies directly to the appellate courts and which incorporates the same principles found in Rule 61." *Id.* 28 U.S.C. § 2111 provides as follows:

> On the hearing of *any appeal* or writ of certiorari in *any case*, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(Emphasis added.)

Given this federal mandate to conduct a harmless error analysis on "any appeal" and in "any case," the Missouri Court of Appeals did not violate federal law or the notion of federal preemption in applying such an analysis in this case. To the contrary, the Missouri Court of Appeals acted in a manner completely consistent with federal law which requires such analysis. Had Petitioner brought his action to compel arbitration in the federal courts, those courts, both district and appellate, would have been required to conduct a harmless error review. Indeed, this Court would have to conduct the same analysis (and undoubtedly would reach the same conclusion) were the Petition for Writ of Certiorari granted.

Petitioner's secondary argument, that the harmless error "principle" should not be used in reviewing a decision denying a motion to compel arbitration is also unsupported by any authority and is directly contrary to the harmless error statute. The federal harmless error statute applies to "any case" and on "any appeal." The statute was enacted in 1949,

twenty-four years after the FAA. Had Congress wanted to exempt the FAA from harmless error analysis, it was perfectly capable of doing so. Given the fact that the harmless error statute was decreed to apply in *all* cases before all federal appellate courts, it certainly could not have been error to apply it here if the FAA governed this arbitration agreement.[9]

B. The Missouri Court of Appeals' decision that Respondents were not required to arbitrate was based primarily on the lack of agency status and that decision is not reviewable by this Court.

While Petitioner seeks to have this Court determine whether harmless error analysis should be used in reviewing decisions denying applications to compel arbitration, he fails to acknowledge that the Missouri Court of Appeals' decision was based primarily on the fact that Respondents, non-signatories to any arbitration agreement, were found to not have had the requisite agency status that would require them to arbitrate. The Missouri Court of Appeals' harmless error analysis was merely cumulative of this prior finding and was not the basis for the decision. Consequently, review of the decision for the reason raised by Petitioner is unnecessary.

Petitioner originally sought to compel Brake, Davis, Bethune, Jones and DBJ, LLC to arbitrate his dispute over legal fees after Brake had withdrawn cases pursuant to the Welch-Brake Agreement. Petitioner argued that Respondents

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9. While Petitioner argues that in cases applying the FAA in state courts the courts cannot perform a harmless error analysis, he never addresses the fact that federal courts applying the FAA would be required to do that very thing because of 28 U.S.C. § 2111. Such an incongruous result offends the very notion of federal preemption as well as common sense.

were required to arbitrate because they were either Brake's agents or were third-party beneficiaries to the Welch-Brake Agreement. The Missouri Court of Appeals, prior to mentioning harmless error, stated that:

> Those principles [of contract and agency law] will, under the proper circumstances, permit a party to an arbitration agreement to compel an agent of the other party to arbitrate a dispute although the agent did not enter into the agreement. Assuming that [Respondents] were agents – the record does not establish clearly that they were – *we discern nothing about the status that would compel them to arbitration.*

Petitioner's App. 5 n.1 (Emphasis added).

The Missouri Court of Appeals' finding that there was nothing about the alleged agency relationship that would require Respondents to arbitrate Petitioner's dispute was supported by the record which included the fact that the Welch-Brake Agreement made no mention of Respondents, made no reference to compensating or sharing fees with other attorneys, Respondents were not trying to enforce any provisions of the Welch-Brake Agreement, and the scope of Respondents' agency, if any, did not involve or relate to how Petitioner and Brake would divide fees. Consequently, the Missouri Court of Appeals correctly decided, prior to application of the harmless error doctrine, that Respondents could not be compelled to arbitrate Petitioner's dispute over legal fees from the withdrawn cases. Since the Missouri Court of Appeals' decision is supported without resort to the harmless error doctrine, Petitioner's claim that the doctrine was erroneously applied need not, and should not, be reached.

C. The lack of a reference to harmless error in other decisions concerning the FAA does not create a conflict between the Missouri Court of Appeals' decision and decisions of other federal courts.

Petitioner claims to have found a conflict between the Missouri Court of Appeals' decision and federal court decisions. The alleged conflict derives from the absence of a reference to harmless error in other court decisions involving the FAA rather than from any statement in any opinion that harmless error should not be applied to a decision denying an Application to Compel Arbitration. The fact that other courts have not faced situations where harmless error analysis needed to be addressed in determining whether to compel arbitration does not create a conflict between the federal courts and the Missouri Court of Appeals' decision.

For there to be an actual conflict between other appellate courts and the Missouri Court of Appeals, Petitioner would need to show that some courts have determined that harmless error analysis should not be applied to a case involving § 2 of the FAA. Petitioner failed to do so and research by Respondents has discovered no such decisions. Silence is not dissent and Petitioner's inability to present any decisions, state or federal, that would find the Missouri Court of Appeals' use of the harmless error doctrine erroneous makes his claim of conflict unpersuasive. Of course, given the fact that federal courts are required to conduct a harmless error analysis under Rule 61 and 28 U.S.C. § 2111, and the general "salutary" purpose of the doctrine to prevent unnecessary litigation, the absence of actual conflicting opinions in which a court determined harmless error analysis could not be used in a case involving the FAA is not surprising.

D. The application of harmless error to decisions concerning § 2 of the Federal Arbitration Act presents no issue warranting certiorari.

Petitioner argues that the application of the harmless error doctrine presents an issue of "great legal and practical importance" and raises fears that the federal policy supporting arbitration will begin to crumble should the decision stand. To say that Petitioner greatly overstates the significance of the Missouri Court of Appeals' ruling would be an understatement.

As a practical matter, harmless error is seldom going to be the basis for supporting a decision denying an application to compel arbitration. Indeed, the absence of any other case involving even a mention of harmless error in considering issues raised by § 2 of the FAA causes Petitioner's alarm to ring hollow. Very rarely would a separate arbitration decision render one of the party's claims against those who were not compelled to arbitrate moot because the losing party lost his right to make the claim in the arbitration decision. However, should it occur again, it would be perfectly appropriate for a court to apply harmless error analysis since there is no logical reason for requiring the excluded parties from arbitrating with the loser when the loser has already been determined not to have any rights to recover against the excluded parties.

There is also no reason to believe that application of harmless error analysis will undermine judicial support for arbitration. One of the major reasons arbitration is encouraged is that it saves time and resources. Application of the harmless error doctrine merely prevents the referral of some matters to arbitration when circumstances have made arbitration pointless. Saving arbitrators from wasting time on futile

disputes so they may concentrate on cases with actual controversies will not work any violence to this principle.

Finally, the Missouri Court of Appeals' decision was not the travesty Petitioner makes it. Rather, it was the proper application of one of the most basic and universal principles of judicial review. The harmless error doctrine is applied by both state and federal courts and, indeed, must be applied by federal courts to all cases pursuant to federal rule and statute. The right to arbitrate does not include the right to have arbitrators and courts continue to hear matters when the party seeking to compel arbitration has no interest in the claim he seeks to litigate.

III. The Federal Arbitration Act should not apply in state court cases as it provides only procedural, and not substantive, rights; therefore, this Court lacks jurisdiction.

Petitioner is appealing the decision of the Missouri Court of Appeals' affirming the denial of his Application to Compel Respondents to arbitrate which was originally brought in a Missouri state court. Petitioner relies on the application of the FAA as the basis for overturning the Missouri Court of Appeals' decisions on the premise that the FAA applies to the Welch-Brake Agreement and preempts state laws, including the use of the harmless error doctrine, which may limit his "federal" right to arbitrate. Respondents submit that the FAA is a procedural statute and should apply only to actions in federal courts. Consequently, this Court does not have jurisdiction to hear this appeal.

Petitioner relies on this Court's decision in *Southland Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984) as the basis for permitting this Court to resolve a dispute involving the FAA that was brought in a state court. Petition for Writ of Certiorari at p. 9. *Southland* was the first decision by this Court finding that the FAA applied to state court actions. Respondents respectfully suggest that this decision was wrongly decided and should be reversed for the reasons put forward by Justice O'Connor in her dissent in *Southland*, 465 U.S. at 21-36, 104 S.Ct. at 864-87 (Rehnquist, J. concurring in dissent), and Justice Thomas in his dissent in *Allied Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 285-97, 115 S.Ct. 834, 845-51, 130 L.Ed.2d 753 (1995) (Scalia, J. concurring in dissent).

CONCLUSION

For all of the foregoing reasons, Respondents request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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